

Members

Sen. Morris Mills, Co-Chairperson
Sen. Beverly Gard
Sen. Frank Mrvan
Sen. Glenn Howard
Sen. Timothy Lanane
Sen. James Lewis
Sen. David Long
Sen. James Merritt
Sen. Becky Skillman
Sen. Thomas Weatherwax
Sen. Gregory Server
Rep. James Bottorff, Co-Chairperson
Rep. Robert Behning
Rep. Richard Bodiker
Rep. James Atterholt
Rep. David Crooks
Rep. Susan Crosby
Rep. David Frizzell
Rep. Brian Hasler
Rep. Jack Lutz
Rep. Edmund Mahern
Rep. Bruce Munson
Rep. Paul Robertson
Rep. Scott Pelath
Rep. David Yount

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REGULATORY FLEXIBILITY COMMITTEE

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MEETING MINUTES¹

Meeting Date: October 10, 2000
Meeting Time: 10:00 A.M.
Meeting Place: State House,
200 W. Washington St.,
Senate Chambers
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Sen. Morris Mills, Co-Chair; Sen. Beverly Gard; Sen. Frank Mrvan; Sen. Glenn Howard; Sen. Timothy Lanane; Sen. James Lewis; Sen. James Merritt; Sen. Becky Skillman; Sen. Thomas Weatherwax; Sen. Gregory Server; Rep. James Bottorff, Co-Chair; Rep. James Atterholt; Rep. David Crooks; Rep. Susan Crosby; Rep. David Frizzell; Rep. Brian Hasler; Rep. Jack Lutz; Rep. Edmund Mahern; Rep. Bruce Munson; Rep. Scott Pelath; Rep. David Yount.

Members Absent: Rep. Richard Bodiker; Rep. Paul Robertson; Rep. Robert Behning; Sen. David Long.

Senator Morris Mills, Co-Chairman of the Regulatory Flexibility Committee, convened the meeting at approximately 10:00 a.m. and asked the members to introduce themselves. He announced that no legislative or policy recommendations would be made by the Committee and then recognized William McCarty, Chairman of the Indiana Utility Regulatory Commission (IURC).

A. Annual Report on the Energy Industry

Chairman McCarty addressed three main topics (for a copy of the Chairman's presentation and handouts, see Exhibits A-D):

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

- (1) **Summer supply issues:** Chairman McCarty reviewed Indiana's energy supply for this past summer. He reported that since the summer of 1999, the Commission has cooperated with utilities to assess preparedness. He stated that there were essentially no stability problems this summer due to these preparedness efforts, additional capacity provided by peaking plants, and relatively mild weather.
- (2) **Natural gas:** The Chairman explained that low gas prices in 1998 and 1999 caused a decrease in production which in turn led to the current supply shortfall and high prices. He noted that merchant power plants are currently responsible for only about 6-10% of the increased demand for natural gas, however, their full impact may not be realized until next year.
- (3) **Merchant power plants:** Chairman McCarty defined merchant power plants (MPPs) and outlined the regional aspect of Indiana's power supply. He stated that the state's traditional rate-based monopoly utilities have deferred construction and that the IURC feels there is a need for some additional capacity. The Chairman stressed that a multi-state regional transmission system with universal membership must exist to ensure efficient energy transport. He also addressed the regulation of MPPs and provided the Committee with a "checklist" of issues which may need to be considered when reviewing future permit applications, including ownership, management, capacity, design, fuel, etc.

Representative David Crooks asked how much scrutiny is given to the water usage of MPPs. Chairman McCarty responded that the IURC has not yet required extensive hydrological studies, but that it may do so in the future. Representative James Bottorff, Co-Chairman of the Committee, asked if restricting the sale of MPP-generated power to in-state buyers would limit development of these plants, and Chairman McCarty responded that it would. Senator Beverly Gard asked about requiring MPPs to open escrow accounts to cover remediation costs and if merchant plants are essential to long-term energy solutions. Chairman McCarty responded that long-term plans may need to incorporate more than just MPPs.

B. Other Testimony on the Energy Industry

Indiana Electric Association

Co-Chairman Mills then recognized Mr. Ed Simcox, President of the Indiana Electric Association (IEA). Mr. Simcox outlined facts related to MPPs and the power spot market and reminded Committee members that Indiana is not self-sufficient with respect to energy. He stated that the IEA's members support demand side controls, conservation, and the exploration of new cost-effective technologies. Senator Gard asked if the IEA regards MPPs as part of the long-term solution for Indiana's energy concerns. Mr. Simcox replied that base load generation is the essence of the state's supply, but that peaking plants and new technologies do have a role.

Indiana Gas Association

Mr. Dan Gavito, Vice President of Regulatory Policy and Government Affairs representing the Northern Indiana Public Service Company (NIPSCO), then addressed the Committee (for a copy of Mr. Gavito's presentation, see Exhibit E). Mr. Gavito outlined the status of the natural gas market and explained that there were historically low storage levels earlier this year. He stated that producers are responding to high prices as drilling rig counts have dramatically increased, alleviating supply concerns for this winter. He added that speculation over winter consumption and demand by MPPs next summer will keep prices relatively high through September 2001 (although there may be a nominal decline). Mr. Gavito stressed that gas utilities are not producers and are allowed a rate of return on the delivery of natural gas, not the actual price.

Indiana Industrial Energy Consumers

Co-Chairman Mills then recognized Mr. Leslie Duvall, representing the Indiana Industrial Energy Consumers (INDIEC). Mr. Duvall noted that while demand has risen, there has been little new generating capacity in Indiana recently and cited projections of shortfalls by the State Utility Forecasting Group. He then addressed the status of deregulation in other states and its impact on economic development, focusing on the experience of California and stating that its deregulation legislation was poorly crafted. He also pointed out that Pennsylvania added a significant amount of generating capacity and that this was key to its success. Mr. Duvall stated that it was likely that deregulation legislation would be filed in the upcoming session and he urged the Committee to consider it.

Co-Chairman Mills then announced a recess until 1:30 p.m.

C. Utility Subsidies to Affiliates (HR 59)

Tom Moore, an HVAC contractor from Kosciusko County, reported that some monopoly utilities have entered diversified service areas traditionally provided by small businesses and that unregulated affiliates have been established to conduct these ventures (for a copy of materials related to this testimony, see Exhibit F). Mr. Moore expressed concerns over cost-shifting between affiliates and parent companies and other unfair practices. He urged the General Assembly to pass legislation requiring the IURC to investigate complaints of cross-subsidization based on a single claim, not ten as is required in current law. Mr. Bill Sherillo of Marion County added that a subsidiary of Citizens Gas is advertising below-cost rates and that this entity can sustain losses for a considerable period of time in order to gain market share.

D. Merchant Power Plants (HCR 81, SCR 34)

Electric Power Supply Association

Co-Chairman Mills recognized Mr. Mark Stultz of the Electric Power Supply Association (for a copy of Mr. Stultz's presentation, see Exhibit G). Mr. Stultz stated that since 1997, more than 197,000 megawatts (MW) have been sold to competitive power suppliers by MPPs and roughly 40,000 MW have been transferred to affiliates. Mr. Stultz related a statement from the North American Reliability Council stating that the additional generating capacity provided by MPPs may be necessary to avoid potential outages. Mr. Stultz stated that MPPs provide taxes, jobs, and help keep utility rates low.

Senator Timothy Lanane asked if MPPs are being constructed primarily to address peak usage needs or to become wholesale power suppliers. Mr. Stultz responded that both are correct: some facilities will only operate a few months during peak demand while others have acquired the ability to generate base load power. Senator Gard asked if there are solutions to long-term reliability other than MPPs, and Mr. Stultz responded that there are other answers such as demand-side solutions and new technology.

Citizens Action Coalition

Mr. Grant Smith of Citizens Action Coalition (CAC) then addressed the Committee. Mr. Smith stated that he is pleased with the IURC's response to this issue. He added that the siting of merchant power plants is an important issue and that deregulation is neither inevitable nor desirable at this time. Mr. Smith introduced Mr. Mike Mullett, who then praised the current IURC and offered three legal opinions (for a copy of handouts related to Mr. Mullett's testimony, see Exhibit H):

1. MPPs are public utilities;
2. MPPs are subject to the IURC's certificate of need process; and
3. the IURC has jurisdiction over the siting of MPPs.

Mr. Mullett reported that all MPPs operating in Indiana have challenged these premises and that every merchant plant application has been either approved or withdrawn. He stated that utility laws may need updating as MPPs want to be considered as manufacturing plants, which are subject only to local planning and zoning regulations. Mr. Mullett addressed the natural gas usage of merchant plants and asked about the cumulative regional and national effects of this consumption. He also noted public risks when MPPs are established as a limited liability companies with non-recourse financing (as opposed to traditional bond-centered financing). Mr. Mullett concluded his remarks by stating that CAC is not against MPPs per se (they did not oppose any of the peaking plants currently in operation), but does not support them if they are not needed.

Co-Chairman Mills asked if the state's investor-owned utilities should increase their base load, and Mr. Mullett responded that they should follow a least-cost plan and add new units when needed. He also stated that if gas prices remain high, CAC could support new coal burning facilities, however, utilities should explore co-firing coal with biomass. Senator Thomas Weatherwax asked about Pennsylvania's progress with deregulation, and Mr. Mullett responded that while Pennsylvania's law is as good as any, it does not benefit consumers enough.

Public Testimony

Co-Chairman Mills then called for public testimony on the subject of MPPs (for a copy of materials and handouts related to this public testimony, see Exhibit I). Mr. Vernon Cherrit of Henry County stated that consumers need to be treated fairly and that the environment must be protected. He referred to deregulation in California and said that utilities cannot be trusted to make "win-win" decisions. Dr. Helen Steussy, a pathologist, spoke on the additive and synergistic public health effects of power plant emissions. In response to a question from Co-Chairman Mills, Dr. Steussy answered that Indiana should encourage solar power and that homes should be self-sufficient with respect to energy. Mr. Gary Chambers suggested that hydrological studies are needed and should be funded by power plant operators. He also asked for a comprehensive state water plan and that attention be paid to natural resource management and farmland preservation. Kristie Fuller of Blackford County expressed concern about public notification and suggested that her community would be better served by wind power. Madlyn Ferris from Delaware County stated that while proponents of MPPs often cite tax revenues, jobs, and economic development, these are not the only important issues. She stressed that quality of life is also key to economic development, especially when attracting high-tech jobs.

Gary Jones, representing the Wells County Chamber of Commerce, stated that there was a proper public forum when the local MPP was built. Neil Potter, Superintendent of Southern Wells County Schools, stated that the neighboring MPP freely provided cooperation and information to citizens. Mr. Potter added that this area has little industrial development and that the plant was beneficial. Patricia Warner of Pike County stated that siting decisions are extremely important and that increasing the base load generated by coal may be a good idea. Rick Mounsey, a farmer from Wells County, related that he has observed the failure of wind power as an effective alternative and that tax revenue provided by MPPs is needed. Steve Stauffer, a high school teacher, stated that solar and wind energy are not efficient alternatives to MPPs. He also noted that the export of excess power is positive for Indiana's economy and that a point-source polluters such as power plants are easier to regulate than automobile emissions.

There being no further business, Co-Chairman Mills thanked all witnesses and Committee members and concluded the meeting at approximately 4:00 p.m.